

**REMARKS/ARGUMENTS**

Claims 1-18 are pending in this application. By this Amendment, Claims 1, 11 and 12 are amended and Claim 18 is added. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Except as indicated in the remarks set forth below, the amendments are made for the purpose of addressing informalities pointed out by the Examiner or improving the clarity of the claims, and are not required to overcome prior art.

The amendments to the claims are supported in the originally-filed application. For example, regarding Claim 1, the at least one data storage device including at least one data storage adapted to store a plurality of data under cryo conditions is supported, for example, as Page 10, lines 17-20 and Page 6, lines 20-23. Support for the direct attachment of the at least one sample chamber to the at least one data storage device is located, for example, at Page 4, line 35 – Page 5, line 1. The at least one sample chamber being made of an inherently flexible and bendable material is disclosed, for example, at Page 4, lines 31-32. Furthermore, regarding Claim 12, support for arranging the cryo storage device in an environment with a reduced temperature of less than -100°C is found, for example, at Page 6, lines 20-23. Accordingly, no new matter is added.

**FORMAL MATTERS**

Claims 1-17 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. This rejection is respectfully traversed for at least the reasons set forth below.

The Examiner asserts that the data storage device recited in Claim 1 is “lacking to indicate its functionality and the kind of flexibility to some respects.” While the Examiner’s assertion is not clear as to “the kind of flexibility to some respects” and the requirement of an amount of functionality in a structural claim, Applicants respectfully submit that amended Claim 1 further clarifies the data storage device as including at least one data storage adapted to store a plurality of data under cryo conditions. Claim 1 is also amended for clarity to recite that the at least one sample chamber is made of an inherently flexible and bendable material. Claim 11 is amended for clarity to correct its dependency to Claim 10. Accordingly, Applicants respectfully submit that the claims are not indefinite and particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Withdrawal of the rejection of the claims under 35 U.S.C. §112 is respectfully requested.

### **35 U.S.C. §102 REJECTION**

Claims 1-5, 7, 8, 10, 12, 13, 15 and 16 stand rejected under 35 U.S.C. §102(b) over Smollett, et al. (U.S. Patent No. 3,292,424). This rejection is respectfully traversed for at least the reasons set forth below.

The Examiner asserts that Smollett discloses all of the features of the rejected claims, including a “cry storage device 22, and at least one data storage device 69”, which is a relay. However, Applicants respectfully submit that Smollett does not disclose a cryostorage device comprising at least one data storage device including at least one data storage adapted to store a plurality of data under cryo conditions and the at least one sample chamber being directly attached to the at least one data storage device, as recited in Claim 1.

The Smollett reference discloses a test device for investigating the pumpability of organic oil in dependency of temperature. The oil is pumped from a reservoir 70 through a duct coil 82 and a chamber 15 with controllable temperature to a receiver 90. The temperature in chamber 15 is controlled with a combination of a relay 69 and a thermoregulator switch 66. See Fig. 1.

The Smollett reference represents background art with regard to investigating thermal material properties only. First, the conventional chamber 15 does not represent a cryostorage device. Applicants interpret the Examiner's assertion of reference No. 22, which refers to an insulated outside wall, as referring to the chamber 15. With the device of Smollett, samples can be stored in the reservoir 70 and the receiver 90 only. However, these components are not adapted for storing the sample under cryogenic conditions, for example, at very low temperature under -50°C.

In addition, Smollett does not disclose data storage being adapted to store a plurality of data as recited in Claim 1. The relay 69 relied upon by the Examiner is an electromechanical switch, which has two conditions, namely activated or non-activated. Accordingly, the relay 69 can store one bit only, but not a plurality of data.

Moreover, Smollett does not disclose an at least one sample chamber being directly attached to the at least one data storage device as recited in Claim 1. The duct cable 82 of Smollett, which is asserted as a sample chamber, is connected to the relay 69, asserted as the claimed data storage device, through thermostatic fluid contained in the chamber 15, a thermoregulator switch 66 and electric leads 68. However, the duct cable 82 and relay 69 are not directly attached. See Fig. 1 and Column 3, lines 26-39.

Therefore, for at least the reasons set forth above, Smollett does not disclose a cryostorage device, at least one data storage device including at least one data storage adapted to store a plurality of data under cryo conditions and at least one sample chamber being directly attached to the at least one data storage device, as recited in Claim 1. It follows that Smollett also does not disclose uptaking at least one suspension sample and at least one sample chamber of a cryostorage device having the features discussed above as in Claim 1, and transferring the at least one suspension sample into a low temperature state by positioning at least a part of the cryostorage device recited in Claim 1 in a cryo-medium, as recited in method Claim 12. Claims 2-5, 7, 8, 10, 13, 15 and 16 depend from one of the independent Claims 1 and 12, and are also believed to be allowable over Smollett for at least the reasons discussed above. Withdrawal of the rejection of Claims 1-5, 7, 8, 10, 12, 13, 15 and 16 under 35 U.S.C. §102 is respectfully requested.

### **35 U.S.C. §103 REJECTIONS**

Claims 6 and 9 stand rejected under 35 U.S.C. §103(a) over Smollett. This rejection is respectfully traversed for at least the reasons set forth below.

The Examiner asserts that regarding Claim 6, multiplicity of data store is an obvious duplication of a single data storage; that labeling accordingly to Claim 9 is a known feature in the and would be an obvious implementation with Smollett; and that regarding Claim 17, sealing sample is also a known feature that would be an obvious implementation with Smollett. These assertions are respectfully traversed.

As discussed above, Smollett does not disclose a cryostorage device, at least one data storage device including at least one data storage adapted to store a plurality of data under cryo

conditions, at least one sample chamber being directly attached to the at least one data storage device, uptaking at least one suspension sample and at least one sample chamber of a cryostorage device, and transferring the at least one suspension sample into a low temperature state by positioning at least part of the cryostorage device of Claim 1 in cryo-medium, as recited in independent Claims 1 and 12, from which Claims 6, 9 and 17 depend. Therefore, Applicants respectfully submit that the dependent Claims 6, 9 and 17 are also allowable over Smollett. Please note that Applicants presume that Claim 17 stands rejected over Smollett even though the claim is not expressly asserted as rejected.

In addition, the knowledge of claimed features not found in the Smollett reference does not in itself establish a *prima facie* case of obviousness without the suggestion of motivation to modify the Smollett reference. In fact, as set forth in MPEP 2143.01, a *prima facie* case of obviousness requires some objective reason to combine the teachings of the references.

For at least the reasons discussed above, Smollett does not disclose or teach the features recited in independent Claims 1, 12 or their dependent Claims 6, 9 and 17. Therefore, a combination of the Smollett reference and the knowledge of a person skilled in the art would not have resulted in the claimed features. Withdrawal of the rejection of Claims 6, 9 and 17 is respectfully requested.

Claim 14 stands rejected under 35 U.S.C. §103(a) over Smollett, et al. in view of Takiue (U.S. Patent Publication No. 2002/0007256 A1). This rejection is respectfully traversed for at least the reasons set forth below.

The Examiner admits that Smollett does not disclose measured and reference data and assert that it would have been obvious to modify Smollett in view of the process center 32 of

Takiue to obtain the desired analysis of the data. However, assuming, *en arguendo*, that the references could be combined, the combination would not have resulted in the features discussed above that are recited in Claim 12 and missing in Smollett. Takiue does not teach these features missing in Smollett, and therefore a combination of the references still would not have resulted in uptaking at least one suspension sample and at least one sample chamber of a cryostorage device, the cryostorage device including at least one data storage device including at least one data storage adapted to store a plurality of data, at least one sample chamber being directly attached to the at least one data storage device, and transferring the at least one suspension sample into a low temperature state by positioning at least the part of the cryostorage device in a cryo-medium, as recited in independent Claim 12, from which Claim 14 depends. Therefore, Claim 14 is believed to be allowable over the combination of references. Withdrawal of the rejection of Claim 14 under 35 U.S.C. §103 is respectfully requested.

#### **NEW CLAIM**

The amendment adds new Claim 18, which recited that the step of transferring the at least one suspension sample into a low-temperature state includes arranging the cryostorage device in an environment with a reduced temperature of less than -100°C. Support for this feature is found, at least, at Page 6, lines 20-23. Applicants respectfully submit that Claim 23 is also allowable over the prior art.

#### **CONCLUSION**

For at least the reasons set forth above, it is respectfully submitted that the above-identified application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are respectfully requested.

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Attorney Docket No. B1180/20035  
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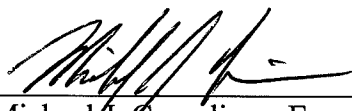
Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

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COHEN & POKOTILOW, LTD.

August 13, 2008

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